IN THE

Supreme Court of the United States

October Term, 1962
No. 34

WILLIAM DOUGLAS and BENNIE WILL MEYES,
Petitioners,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF.

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Introduction.

On March 5, 1962, the "Brief For Petitioners" in the instant case was filed. On April 5, 1962, the "Respondent's Brief" was filed. On April 17, 1962, this Honorable Court heard oral argument in this matter. On June 25, 1962, this court ordered this case to be reargued in conjunction with two other cases, to wit, *Gideon v. Cochran*, No. 155, and *Draper, et al. v. Washington*, No. 201. Then on October 9, 1962, this court ordered the case of *Lane v. Brown*, No. 283, calendared for argument along with the above two cases and the instant case.

On or about December 5, 1962, a "Supplemental Brief For Petitioners" was filed in the instant case. Respondent respectfully submits the within "Respondent's Supplemental Brief" in response to said petitioners' supplemental brief.

I.

Petitioners Were Not Denied the Effective Aid of Counsel by the Trial Court.

First of all, the author of the supplemental petitioners' brief seeks to invoke the aid of Mr. Abe Fortas' "Brief for The Petitioner" filed in the companion case of *Gideon v. Cochran*, No. 155. (Supp. Br. for Pet. p. 3.)

It is submitted that the author of petitioner's supplemental brief has missed the force and effect of respondent's argument in its original brief with respect to the representation of the two petitioners at their trial. Respondent did not and does not argue that the petitioners were not entitled to have any counsel whatever appointed for them in the instant non-capital case because of this Honorable Court's pronouncements in *Betts v. Brady*, 316 U. S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595.

Indeed, it is submitted that the entire argument advanced by respondent in its original brief before this Honorable Court, centers around the facts of the instant case which show that the indigent petitioners did, in fact, have an effective counsel appointed to represent them; that they dismissed him improperly; that the claim that they were legally entitled to separate counsel was and is without merit; that the claim that they had a "conflict of interest" was not borne out by the facts; and finally that the principles enunciated by this Honorable Court in *Glasser v. United States*, 315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680, are harmonious with the convictions in the instant case, and a reversal of this case cannot be predicated on the reversal had in the *Glasser* case, *supra*. (Rep. Br. pp. 12-28.)

In discussing the need for a continuance in the case at bar and the alleged error in denying a continuance to the public defender (Supp. Br. for Pet. pp. 4-7), the author of petitioners' supplemental brief demonstrates a lack of knowledge of the background facts which were placed before this Honorable Court during oral argument on April 17, 1962.

In said oral argument it was brought out that on or about February 24, 1959, and again on May 11, 1959, both petitioners had been tried for a murder (the first trial ending in a mistrial and the second trial resulting in a second degree conviction of Meyes and an acquittal of Douglas). As early as November 6, 1958, the public defender had been appointed to represent Meyes against said murder charge (Deputy Public Defender Breckinridge). During the two murder trials, evidence of the instant robberies was introduced to show a motive for this murder of one of the police officers attempting to arrest petitioners for the instant robberies.

People v. Meyes, 198 Cal. App. 2d 484, 490, 18 Cal. Rptr. 322.

Also see:

Resp. Br. pp. 23-24.

The public defender represented Meyes in both murder cases and Douglas had a private counsel.

As to the instant case, the public defender represented both petitioners at a preliminary hearing on August 3 and 4, 1959 and in a 227-page preliminary record, 141 pages were made up of cross-examination by the public defender representing both petitioners (Deputy Public Defender Saiter).

Thus, when the instant trial commenced on September 30, 1959, the Los Angeles Public Defender's Office had been connected with petitioner Meyes for approximately 10 months, and had been connected with both petitioners on a joint basis for almost two months prior to the opening day of trial!*

It is submitted that there was ample time for that office to prepare a solid legal defense for both petitioners, and also that there was ample time to present any real "conflict of interests" problems to the trial court prior to the opening day of trial.

Petitioners not only had a preliminary hearing on August 3, 1959, *supra*, with joint representation by the public defender, but they were arraigned on August 18, 1959, and the public defender was formally appointed to represent them at the trial! Nothing was said at this time about any "conflict." [Tr. of R. p. 9.]

Again, on August 21, 1959, the petitioners were in court and entered their pleas. Again, nothing was said about any "conflict." [Tr. of R. p. 10.]

Thus, there was ample opportunity in open court on at least three separate occasions for the public defender to raise a question of "conflict of interests" and make a showing of what the "conflict" was.

The author of petitioners' supplemental brief contends that the only argument made to the District Court of Appeal on the issue of right to counsel "appears to have been the State's argument that the motions for a con-

*The preliminary hearing transcript and the murder trial transcripts can be lodged with this Honorable Court, if they desire to corroborate these representations.

tinuance were not made in good faith." (Supp. Br. for Pet. p. 5.)

As an officer of the Honorable Court, respondent respectfully submits to the court that the issue of the denial of petitioners motions for continuance and their alleged "conflict of interests" was discussed at length in Respondent's Brief in the District Court of Appeal. While the petitioners failed to raise the alleged "conflict" problem, respondent presented it fully and, although no oral argument was had since petitioners were *in propria persona*, respondent cited to the court the then recently decided "conflict of interest" case of *People v. Kerfoot*, 184 Cal. App. 2d. 622, 7 Cal. Rptr. 674. Thus, the District Court of Appeal was completely informed of all matters that are now before this Honorable Court.*

The author of petitioners' supplemental brief next turns the argument to the question of whether or not both Meyes and Douglas could have been effectively represented by the one public defender appointed in their case, whom they later dismissed. (Supp. Br. for Pet. pp. 7-9.) Respondent's earlier argument on this point is found at pages 12-28 of Respondent's Brief, *supra*.

Essentially respondent urged in its original brief that the facts of the instant case showed no such trial conflict of interests as occurred in *Glasser v. United States*, *supra* (315 U. S. 60, 62 S. Ct. 457, 86 L. Ed. 680), between Glasser and Kretske. (Resp. Br. pp. 15-16.) Both Kretske and Glasser had totally different roles in the alleged crime charged against them.

*A copy of respondent's brief in the District Court of Appeal can likewise be lodged with this Honorable Court to substantiate the above representation.

In the case at bar, the testimony of the many eyewitness-victims of the various counts charged against Meyes and Douglas was received. It is submitted that an analysis of all of the eyewitness' testimony squarely identifies both Douglas and Meyes as perpetrators of the 13 counts charged. [Tr. of R. pp. 104-151.]

Now, the author of the petitioners' supplemental brief contends at page 8 of said brief that Fanny Tubbs failed to identify Douglas with the same clarity as Meyes, citing the Transcript of Record page 100. If the court looks at page 100 of the instant record, it is submitted that it clearly appears that Miss Tubbs identified both petitioners *in court* as being the armed robbers she had seen. She did acknowledge that she had seen Meyes at some date prior to the instant robbery of her. However, failure to have seen Douglas before the crime hardly detracts from her unhesitant courtroom identification.

The author of the petitioners' supplemental brief points to the "weak" identifications of Douglas by one Mr. Hatch and one Mr. Carroll in their testimony. [Supp. Br. for Pet. p. 8, Tr. of R. pp. 122,127.] However, it is submitted that one man found Douglas "similar in build" [Tr. of R. p. 124] and the other found Douglas "resembles" the other armed perpetrator of the robbery. Both identified Meyes. [Tr. of R. pp. 127-128.] These identifications of Douglas must be examined in connection with Douglas' admissions to Officer Bitterolf that he had been in "a whole lot" of robberies with "Bennie" (Meyes)." [Tr. of R. p. 148.] Also, Mr. Hatch's identification of Douglas is bolstered by the fact that Mr. Hatch's wallet was found in Douglas' bedroom. [Tr. of R. pp. 125, 147-148.]

These cited instances of "clarity" of identification fall far short of a demonstration of a trial "conflict of interest" in the evidence received against the petitioners, and certainly they cannot be brought within the ambit of the "conflict" found in *Glasser v. United States, supra*, 62 S. Ct. 457.

Also in this connection, it should be remembered that the evidence of the instant robberies and assaults had been introduced in the earlier murder cases against petitioners, and that neither petitioner advanced an alibi or any other defense that conflicted with the other's interests, *supra*.

People v. Meyes, supra, 108 Cal. App. 2d 484, 490.

See also:

Resp. Br. pp. 23-25.

Next, it should be noted that in both briefs filed on behalf of petitioners, the contention is made that Meyes and Douglas needed separate counsel so that the counsel representing Douglas could take advantage of the fact that Douglas had been acquitted of the earlier murder charge and that Meyes had been convicted of said murder in the second degree. (Br. for Pet. pp. 6-8; Supp. Br. for Pet. p. 7.)

It is submitted that both petitioners' briefs fail to spell out what the particular advantage to Douglas would be. There is absolutely no showing made of a burdensome "conflict of interests" necessitating that each petitioner have separate counsel. A mere conclusion absent any analysis of the facts is advanced. Let us turn to the evidence of the police killing in the *instant* record for a minute, and set aside the prior murder trials:

Police Officer Bitterolf stated that he was one of the officers who arrested the two petitioners. He went to Douglas' apartment along with a fellow officer, Gene Nash. He had occasion to go to Douglas' bedroom and he found Officer Nash wounded. He talked with Douglas, who admitted to "a whole lot" of robberies that he had committed with "Bennie" (Meyes). Officer Bitterolf asked Douglas where his (Douglas') gun was and Douglas stated "You're going to find out anyway. Bennie got it. That's the gun he used to shoot the officer with." [Tr. of R. p. 148.]

Officer Bitterolf acknowledged that Officer Nash died later, and that petitioner Meyes had been apprehended a block from Douglas' apartment. He had observed that Nash's gun had been fired and Douglas had been wounded. [Tr. of R. pp. 149-150.]

It is submitted that this is the sum total of any evidence of a killing offered in the instant case. Said evidence came in to show how, when, and where the petitioners were apprehended. It also showed that an officer had been shot in an attempt to arrest petitioners, indicating an attempt to avoid arrest by petitioners.

It is indeed to be wondered what advantage a separate attorney could gain for Douglas on these facts. It must be noted here that the instant jury could not be told that a murder case was even brought out of these facts, and that one petitioner had been acquitted (Douglas) and one convicted (Meyes).

The only possible way the jury could have been informed that either petitioner had ever had any connection with any murder at all, would be if Meyes had testified, and the prosecution had utilized the murder conviction to impeach his credibility.

California Code of Civil Procedure Section 2051 provides:

> "A witness may be impeached by the party against whom he was called, by contradictory evidence or by evidence that his general reputation for truth, honesty, or integrity is bad, but not by evidence of particular wrongful acts, except that it may be shown by the examination of the witness, or the record of the judgment, that he had been convicted of a felony unless he had previously received a full and unconditional pardon, based upon a certificate of rehabilitation."

Assuming Meyes takes the stand, how far can a prosecutor go in his questioning with respect to the prior murder conviction?

> "The inquiry of the cross-examiner is limited to the fact of the conviction of a felony and the nature of the crime. (Cases cited.) *He may not go into details or circumstances surrounding the offense.* (Cases cited.)" (Emphasis added.)
>
> *People v. Miller*, 188 Cal. App. 2d 156, 170. 10 Cal. Rptr. 326.

Thus, even if Meyes takes the stand, it could only be brought out that he had been formerly convicted of a murder in the second degree. The person murdered and other details could not be placed in front of the instant jury. Therefore, what advantage *per se* really exists in the acquittal of Douglas and conviction of Meyes on the murder charge?

We submit that no advantage exists and that the disposition of the murder case alone places no burden on one counsel representing both petitioners.

In petitioners' supplemental brief, the author contends that Meyes' prior felony convictions (including the murder), as opposed to Douglas' "clear" record, would present an undue burden on a single counsel representing petitioners jointly. The burden, according to said author, would be in deciding on whether each should take the witness stand. The author feels that since California allows comment on the failure to testify, that this adds particular complexity to the burden on a single counsel in deciding on who does and who does not take the stand. (Supp. Br. for Pet. p. 8.)

Before this contention is analyzed, let us assume that this Honorable Court accepts respondent's other arguments, *supra*, to the effect that no conflict exists in the actual trial evidence against or for the petitioners, and that the evidence with respect to the killing of the arresting officer *per se* presented no real conflict between the two petitioners from an evidentiary standpoint.

The issue thus becomes whether or not, *in the case at bar*, one counsel can effectively represent both petitioners when one of the petitioners (Meyes) has four prior felony convictions (1 burglary, 2 robbery, and 1 murder) against him [Tr. of R. pp. 7-8; *People v. Meyes*, *supra*, 198 Cal. App. 2d 484] and the second petitioner (Douglas) has no felony record. Otherwise stated, is there such a "conflict of interests" between petitioners as to their background records, that effective representation of both men by one counsel in a trial is precluded?

It is submitted that when one scrutinizes the instant case through the glasses of trial practicalities and tactics, not only can Douglas and Meyes be effectively repre-

sented by but a single counsel, they can be *more* effectively represented jointly by a single counsel than if each had separate counsel! Let us consider the following propositions:

1. If a defendant *does not* take the stand, California does permit comment upon his failure to testify.

Cal. Const. Art. I, §13.

2. If a defendant *does* take the stand, his testimony may be impeached by showing that he has been convicted of a felony or felonies prior to the time of his testimony.

Cal. Code Civ. Proc. §2051, *supra*.

3. In the instant case, Douglas would testify. He has no prior record on which he could be impeached, and he has been so well identified as a perpetrator of the crimes charged, that he has to take the stand and defend himself.

4. The fact that Douglas testifies will certainly not hurt Meyes. (Actually, in the prior murder trials, Douglas presented an alibi as to one of the instant crimes and flatly denied commission of the others. Meyes flatly denied commission of the instant crimes when he testified in the murder trials. See *People v. Meyes*, *supra*, 198 Cal. App. 2d 484, 490.)

5. Now it can be hypothecated that if Meyes does not testify in the instant trial, Douglas will be badly hurt for the following reasons: There is abundant prosecution evidence linking Douglas to Meyes as a joint perpetrator of the crimes. If

Meyes stays off the stand "his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court."

Calif. Const. Art. I, §13, *supra*;

Cal. Pen. Code, §1127.

Due to the linking of the two petitioners in the commission of the instant crimes by the many eyewitness victims, it is easy to see the damage which would accrue to Douglas when the trial judge proceeded to comment upon Meyes' failure to testify and explain all the eyewitnesses testimony against him. Douglas' denials on the witness stand would not neutralize this damage.

6. If Meyes did testify, it is true that his prior felony convictions could be brought out to impeach his credibility. (Cal. Code Civ. Proc. §2051, *supra*.) However, the jury is instructed, as it was in the instant case, that "*a witness may be asked if he has ever been convicted of a felony, and that can be asked only on one basis and that is for the possible impeachment of him as a witness, and that can be the only basis that it can be considered. It cannot be considered for any other purpose.*" [Emphasis added. Tr. of R. p. 65.]

In other words, the jury was told that they could not utilize Meyes' prior convictions to enforce the prosecution evidence of guilt against Meyes himself, let alone against Douglas. They could *only* use it to appraise the believability of Meyes' testimony.

Therefore, if Meyes takes the stand, Douglas is at least protected to the extent that the jury is instructed on the limitations which they must place on the evidence of Meyes' prior felony convictions. But if Meyes does not testify, Douglas is going to have to sit still while the trial court comments on Meyes' failure to testify and the effect this has on the evidence aganist Meyes (and impliedly, against Douglas).

It is thus an inescapable conclusion that Douglas will be far better off if Meyes takes the stand than he would be if Meyes does not take the stand.

7. As to Meyes' own position, it is submitted that with all of the eyewitness evidence against him on each of the counts charged, coupled with the power of the judge to comment if he fails to testify, his only chance to gain an acquittal on all or any part of the charges, is for him to testify on his own behalf, and let the trial court limit the effect of his prior convictions by the specific limiting instruction, *supra*.

8. We thus reach the conclusion that both petioners are much better off if the one with the bad record (Meyes) testifies, than they are if he fails to testify.

It is obvious that the public defender in the instant case had reached this decision since he was educating the jury with respect to Meyes' past record on voir dire, with an eye to putting him on the stand. [Tr. of R. p. 65.]

Since the evidence in the instant case inextricably linked both petitioners, it is submitted that a

united front with both men testifying in spite of Meyes' prior record was the only possible defense tactic. With one attorney guiding their joint destinies, both petitioners were guaranteed that the best step for both of them was taken, *i.e.*, Meyes taking the stand, *supra*. If, however, a second counsel represented Meyes and placed undue emphasis on his past record alone, said counsel may have kept Meyes off of the stand, and both petitioners would suffer the burden of the trial court's comment on Meyes' failure to testify, *supra*. Also, a separate counsel for Meyes may easily ignore the tactical analysis set out above, simply because he is guiding only one petitioner's destiny.

Thus the public defender in the instant case was in a better position to render effective aid to petitioners in the instant case than a separate counsel for each petitioner would be, and the so-called burden of deciding which petitioner should take the stand is nonexistent. Both petitioners *must* take stand.

It should also be considered that if this court decides to find that two defendants have a "conflict of interests" merely because one has a prior record and the other does not, they open the door to a myriad of problems in deciding what type of conflict between two defendants necessitates separate counsel for each. How bad does the record have to be? Must the priors be related to the crime charged? What if instead of a prior conviction record one of the defendants is from a minority group and the other not? What if one defendant is a laborer and his codefendant a banker?

A conflict in the actual evidence against two defendants or a conflict in their defenses, is a tangible demonstrable legal problem. But a conflict predicated on one man's background compared to another's is a conflict of tenuous and uncertain bounds.

It is nonetheless submitted, that no "conflict of interests" in the prosecution evidence, defense, or the prior record of one of the petitioners exists in the instant case which calls for the appointment of separate counsel for each petitioner. No undue burden would be placed on a single counsel representing petitioners jointly. It is interesting to note that the author of the petitioners' supplemental brief contends that Douglas was stigmatized not only by Meyes' convictions, *supra*, but by Meyes' "belligerance and recalcitrance on the stand." (Supp. Br. for Pet. p. 8.) It is, however, submitted that a reading of this record shows that both petitioners gave variations on the same theme of delaying tactics throughout the proceedings. Further, to hold that the demeanor in court of one defendant conflicts with that of his codefendant certainly is not the type of conflict embraced by *Glasser v. United States*, *supra*. (315 U. S. 60.)

The author of petitioners' supplemental brief contends that "Petitioner Douglas' motion for a continuance to retain counsel was denied on the mere basis that the motions for a continuance were made piecemeal [R. 30], even though this motion stemmed from the denial of the previous one for the appointment of separate counsel." (Pet. Supp. Br. pp. 9-10.)

It is submitted that this contention is patently belied by the record. While the trial judge talked in terms of prior motions for continuance, he was in fact re

ferring to the long period of time that the matter had been before the courts, and the fact that for the first time at 10:10 a.m. on the first day of trial, Douglas suddenly comes up with a counsel, "Leo Brennan." [Tr. of R. p. 36.]

Recall again that the preliminary hearing was had in the instant case on August 3, 1959 and that on August 18, 1959, the public defender had been appointed to represent petitioners, *supra*. [Tr. of R. p. 9.] The petitioners were in court on August 21, 1959 to enter their pleas. [Tr. of R. p. 10.] The instant trial commenced on September 30, 1959. [Tr. of R. p. 11.] It is submitted that there was ample time for Douglas to procure a counsel, if he really had been in touch with one. The trial court did not abuse its discretion in denying this motion for continuance.

II.

The Petitioners Were Not Deprived of Due Process of Law When the California District Court of Appeal Refused to Appoint Them Counsel on Appeal After Said Court Made an Independent Investigation.

The argument with respect to appointment of counsel on appeal was covered in the original "Brief for Petitioner" at pages 13-21 and in "Respondent's Brief" at pages 29-46.

The author of the petitioner's supplemental brief has misstated completely a fact of great importance to the posture of the instant case on appeal:

> "Petitioner Douglas' argument that he needed separate trial counsel in order to secure effective aid was not presented in petitioner Meyes' pro se

brief, which the appellate court stated was submitted for both of them. (R. 192.) Respondent noted the motion for separate counsel only to argue that it had not been made in good faith, basing this argument on the non-sequitur that Douglas stated at one point that 'he was prepared' for trial (Petr's Brief in this Court, p. 19, note).

"Because Douglas was unrepresented and no argument was held in the appellate court, an important California decision on the conflict of interest question was not formally brought to the court's attention, let alone argued to it (ibid)."

Supp. Br. for Pet. p. 13.

As stated at oral argument before this Honorable Court on April 17, 1962 and in Argument I, *supra*, certain of the records such as the preliminary hearing transcript, either murder trial transcript, the *in propria persona* briefs of Meyes and Douglas and the respondent's brief in the District Court of Appeal, might best be lodged before this Honorable Court.

In the *in propria persona* brief filed in the District Court of Appeal by Meyes, the matter of the denial of both petitioners' motions for continuance was discussed at length.

It is true that the matter of separate counsel for each petitioner was not raised in said brief, however, respondent again submits as represented under Argument I, *supra*, that in his respondent's brief in said court, he devoted eight full pages to a discussion of said point, which included a full discussion of the "conflict of interests" cases of *People v. Robinson*, 42 Cal. 2d 741, 269 P. 2d 6, and *People v. Lanigan*, 22 Cal. 2d

569, 140 P. 2d 24. The instant case was briefed in the court below before the case of *People v. Kerfoot, supra,* 184 Cal. App. 2d 622, 7 Cal. Rptr. 674, had been decided. (Pet. Br. pp. 9-10, note.)

However, at the time of the oral argument, respondent went before the District Court of Appeal and cited the *Kerfoot* case to said court, *supra,* Argument I.

So the lower appellate court did have the "conflict of interests" point before them, as well as "an important California decision on the conflict of interest." (Pet. Supp. Br. p. 13, *supra.*)

As was done in the original petitioners' brief, the supplemental petitioners' brief assumes that the absence of comment on certain points by the lower appellate court is complete and conclusive evidence that the matters did not come to their attention. (Pet. Supp. Br. p. 13.)

However, it is again submitted that the lower appellate justices, who did in fact have the point before them, concluded that no real "conflict of interests" existed and disposed of the point without comment. (Resp. Br. pp. 44-45.)

At the risk of repetition, jurists disagree sharply on the validity of legal arguments. A proposition that one jurist may dispose of without comment may elicit a five-page dissertation by a dissenting jurist on the same court and vice-versa. (Resp. Br. pp. 45-46.)

Respondent will not here repeat the procedure followed by the California Appellate Courts in deciding whether an indigent appellant needs counsel or not. This is amply covered by the Respondent's Brief at pages 33-41.

In *Griffin v. Illinois*, 351 U. S. 12, 100 L. Ed. 891, 76 S. Ct. 585, this court stated (100 L. Ed. 891 at p. 899) in discussing the right of an indigent to a transcript:

> ". . . We do not hold, however, that Illinois must purchase a stenographer's transcript in every case where a defendant cannot buy it. *The Supreme Court may find other means of affording adequate and effective appellate review to indigent defendants.* . . ." (Emphasis added; Resp. Br. p. 44.)

It is submitted that an indigent appellant in California is provided with a full and complete record in *every* case that goes up on appeal. This record goes before the appellate court. They review that complete record and decide if counsel would benefit either the appellant or the court. If they decide that the appeal presents no complex problems, *after reviewing the record*, they do not appoint counsel, but nonetheless do go on and consider the case and render a written opinion.

It is submitted that said practice affords "adequate and effective appellate review to indigent defendants . . ." in accordance with the spirit of *Griffin v. Illinois, supra*, in spite of no automatic appointment of counsel in every case.

It is sincerely submitted that an independent review of the trial record by one or more experienced California appellate justices who "are conscientious to a fault" (Br. for Pet. p. 20) is a more effective review than one had by a private practicing counsel who, more often than not, is irritated with his court appointment. It could well be that a court-appointed counsel will give a

hasty review pursuant to a court appointment, and then report back to court that he found no meritorious points. The appellate court may well accept the word of this "advocate" and affirm a conviction without the presently utilized "independent" investigation which petitioners here contend is an inadequate review. A sound legal point may thus go unnoticed.

The author of petitioners' supplemental brief, in referring to the asserted denial of due process at the appellate level (Supp. Br. for Pet. p. 16), and asserting that to permit the presiding judge to have the sole say as to the correctness of his conduct and rulings would be basically unfair, is apparently referring to proceedings in which the criminal defendant is met at the threshold of the appellate process by a requirement that he obtain a finding of the trial court that his appeal has merit in order to be able to appeal or to obtain the means (*i.e.*, a transcript) of having an effective appellate review of his trial proceedings.

California affords the indigent defendant equal access to the appellate courts and the means of obtaining effective appellate review of the trial proceedings. The procedure followed in California does not deny an indigent defendant due process.

We recognize that, although a state may withhold completely the right to appeal, once it has made generally available such review it cannot withhold from indigent appellants this right which is made available to those able to pay the expenses attendant the exercise of this right. However, where petitioners were afforded a complete review by the appellate court on the appeal they have not been denied anything because of their indigency.

Conclusion.

It is submitted that there was no denial of counsel to these petitioners at the trial as they were afforded competent counsel in accord with California statutory requirements and they dismissed that counsel asserting that he was unprepared and making themselves the sole judges of his preparedness and competency. Their claims in this regard are not supported by the record.

The asserted conflict now made was a mere suggestion of which they now also wish to be the sole judges.

It is submitted that California may properly require a conflict to be established as a demonstrable reality in order to allow one claiming a conflict to prevail.

Further, it is submitted these petitioners were afforded a thorough and adequate appellate review of the proceedings in the trial court and they may not be heard to assert that they were denied any rights of review because of their poverty. Accordingly, the judgment of the court below should be affirmed.

Respectfully submitted,

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